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No. 90-1589

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

AKHLAQ A. CHAWLA,

Petitioner,

vs.

CHARLES McCAUSLAND, Lt. Gen., Director,
Defense Logistics Agency.

Respondent.

Petition for a Writ of Certiorari to the
United States Court of Appeals For the
Sixth Circuit

REPLY BRIEF OF PETITIONER

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QUESTION PRESENTED FOR REVIEW

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OPINIONS BELOW

1. The opinion of the United States Court of Appeals for the Sixth Circuit (Pet. App. A-1, A-3) is unreported.

2. The opinion of the United

States District Court for the southern district of Ohio (Pet. App. A-4, A-6) is unreported.

3. The opinion of the United States District Court for the district of Colorado (Pet. App. A-7, A-8) is unreported.

JURISDICTION

Per Petition pages 2 and 3.

STATEMENT OF THE CASE

Per petition pages 3 through 7.

ARGUMENTS

Respondent has cited (Br. in Opp. 3,4, & 5) the Supreme Court's holding in *Irwin v. Veterans Administration, 111 S. Ct. 453-458 (1990)*, in which the Court did not permit equitable tolling. In *Irwin* EEOC's 'Notice Of Final Action' was

received by Irwin Attorney's Office on March 23, 1987, while his Attorney was out of town. The Attorney came to know of the Notice on April 9, 1987, and Irwin came to know of the same on April 7, 1987. On May 6, 1987, (i.e., 44 days after Attorney's Office received the Notice and 29 days after Irwin received the Notice.) civil action was filed. The U. S. District court dismissed the case for lack of jurisdiction and the U. S. Court of Appeals affirmed.

The U. S Supreme Court ruled: "Thirty day time period specified by 42 U. S. C. 2000e-16(c) for federal employees to file suit after receipt of Notice Of Final Action taken by EEOC begins to run when EEOC right to sue letter is delivered to claimant or claimant's attorney whichever comes first... a receipt by attorney's office was the receipt by the attorney."

Obviously, Irwin's case has little similarity with the Petitioner's case. By contrast, Petitioner has been acting with utmost diligence, only to find himself caught up in an arcane procedural snare. See Martinez v. Orr, 738 F.2d at 1112. Such unusual circumstances warrant the use of equitable tolling. See Warren v. Department of Army, 867 F.2d at 1160.

In Mahroom v. Defense Language Institute, 732 F.2d at 1440 (1984), U.S. Court of Appeals held:

> "In interpreting the procedural requirements of Title VII we are guided by the Supreme Court's admonition that 'a technical reading would be particularly inappropriate in a statutory scheme in which laymen, unassisted by a trained lawyers, initiate the process.'" Quoting Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 397.

Respondent's claim (Br. in Opp. 4), that respondent was not prejudiced by failing to indicate clearly in 'Notice Of Final Agency Decision' (Pet. A-9 to A-12)

U.S. District Court of proper venue, is incorrect.

Respondent did include name of defendant and address for 'Office Of Review And Appeals', EEOC (Pet. A-10, Paragraph 3.), but, did conceal information pertaining to U.S. District Court of proper venue (Pet. A-11, Paragraphs 4 to 7). Second situation of *Manning v. Carlin, 786 F.2d 1108, 1109 (11th Circuit 1986)*, when the statue in question be equitably tolled, i.e.,

> *"when the defendant had concealed an act supporting the Title VII cause of action",*

is present here.

The 'Notice Of Final Agency Decision' was sent to Petitioner in Colorado (the state of petitioner's residence) and to Petitioner (Pro se) U.S. District Court for the District of Colorado deemed appropriate.

Respondent's claim (Br. in Opp. 3),

that the decision of U.S. District Court for the District of Colorado (Pet. A-7, A-8) was not in error is incorrect.

Failure to transfer petitioner's case to any of the two(2) District Courts of proper venue (Missouri and Ohio) was not in accordance with the rulings of the two(2) authorities (Pet. 8).

As a matter of fact, the dismissal of petitioner's civil action by the Court for the District of Colorado *'lulled'* the petitioner into *'inaction'*. If petitioner had appealed the decision of the Court in a Court of Appeals for the District of Colorado, the Venue would have been improper. And if petitioner had filed the same complaint in one of the Courts of proper venue, the action would have been barred by statue of limitation. In Martinez v. Orr, 738 F.2d at 1110 the circuit court agreed:

> "... equitable tolling may be appropriate where a plaintiff has been 'lulled' into an 'inaction' by her past employer, state or federal agencies, or the courts." Quoting Carlile v. South Routt School District RE 3-J, 652 F.2d 981, 986 (10th Cir. 1981).

Arguments and authorities cited in this Reply Brief and in Petition For Writ Of Certiorari vehemently support entitlement of equitable tolling of the period (i.e., from May 19, 1989 to January 25, 1990) from the time of dismissal of 'Complaint' from the Court for the District of Colorado to the time of filing of 'Amended Complaint' in the Court for the Southern District of Ohio.

CONCLUSION

Per petition page 14.

Respectfully submitted,

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Dated: May 1991